



June 17, 2002

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County - Civil Division
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2002-3261

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164382.

The Lubbock County Sheriff's Office (the "sheriff") received a written request for two particular offense reports. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

We note at the outset that one of the requested offense reports pertains to the assault of a child. *See* Fam. Code § 101.003(a) (defining "child" as "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes"). Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Offense Report Number 01-130-74 comes within the ambit of section 261.201, and none of that section's release provisions appear to apply in this instance. Accordingly, the sheriff must withhold this report in its entirety pursuant to section 552.101 of the Government Code.

You contend that Offense Report No. 02-125-34 is excepted from public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

You state that Offense Report No. 02-125-34 relates to a pending criminal investigation and prosecution. Based on your representation, we conclude that the sheriff may withhold most of the information in this offense report pursuant to section 552.108(a)(1) of the Government Code. Section 552.108, however, does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. Thus, the sheriff must release the types of information that are considered to be front page offense report information, including a detailed description of the offense, even if this information is not actually located on the front page of the offense report. Furthermore, although you contend that the identity of the victim in the offense report is protected by common-law privacy, after reviewing the information at issue, we conclude that the victim's privacy interests are not implicated in this instance. See generally *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (only highly intimate or embarrassing information of no legitimate concern to the public protected by common-law privacy). The sheriff therefore must release the victim's identity along with the other basic information.

In summary, Offense Report Number 01-130-74 must be withheld in its entirety pursuant to section 261.201 of the Family Code. The sheriff may withhold most of Offense Report No. 02-125-34, but all basic information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/sdk

Ref: ID# 164382

Enc: Submitted documents

c: Ms. Janet Gonzales
P.O. Box 914
Wolfforth, Texas 79382
(w/o enclosures)